view is well expressed by Mr. Chief Justice WALKER in *Hall* v. *Marks*, supra; "The rendition of a judgment by default and the assessment of damages are judicial acts and belong to the judicial and not to the ministerial part of the court. It must be judicially determined that a sufficient summons has issued, and that legal service has been had on the defendant. The constitution confers these powers upon the judicial department. The clerk possesses no power or jurisdiction to render a judgment, but only to enter it under the express or implied order of the judge, and the constitution having prohibited him from the exercise of such a power, the general assembly cannot confer it." Admitting that the act of the clerk in rendering and entering a judgment of default is purely ministerial, the right to the writ of mandamus in order to coerce a particular judgment would seem to follow as a matter of course, since the character of the act and not the nature of the office is the controlling test. SPELLING, EXTRAORDINARY RELIEF, § 1384.

EMINENT DOMAIN—DAMAGES.—The defendant railway company condemned a strip of land running through a large automobile manufacturing plant owned by plaintiff. The strip took no substantial buildings, but it separated the principal portion of the factory from the testing track, and prevented the company from expanding in that direction on properties owned by the company. In a proceeding to determine the amount of damage to the plant, it was contended by the plaintiff that the opportunity for expansion had much to do with the value of manufacturing plants. The defendant attempted to prove in mitigation that there was land adjoining the plaintiff's land on the other side which was available for expansion, and could be purchased at a reasonable rate. *Held*, (MARSHALL, J., dissenting), the damages recoverable are to be measured by the difference between the fair market value of the whole property before taking and the value of what remains, considering the actual use of the land taken and the owner's intention as to its future use, as well as its adaptability for future use, and evidence that there are lands available for the plaintiff's expansion which adjoin the manufacturing plant on another side should not be considered in mitigation. *Jeffery et al.* v. *Osborne et al.* (1911), — Wis. —, 129 N. W. 931.

The court in considering the question of damages considered itself bound by the rule laid down in a former appeal of this case, in which the court gave as the reason for the exclusion of the evidence, that it is not material that he could move part of his plant to other land for the purpose of giving the appellant a right of way, and thus, in effect, swap land for the accommodation of appellant. *Jeffery* v. *Chicago, etc. R. R. Co.*, 138 Wis. 1, 119 N. W. 879. The general rule of mitigation of damages is that the person injured must use reasonable means to reduce the damages as far as possible. *French* v. *Vining*, 102 Mass. 132, 3 Am. Rep. 440; *Harrison* v. *Mo. Pac. Ry. Co.*, 88 Mo. 625; *Jager* v. *City of N. Y.*, 35 Misc. Rep. 622, 75 App. Div. 258; *Kendall* v. *Chicago, etc. Ry. Co.* (Tex.) 95 S. W. 757. It would seem as though the evidence refused in the principal case should be admitted under that rule. In a case where the railroad took part of a race track used in training horses, the measure of damages was held to be the cost of building a new track.

Matter of N. Y. etc. R. R. Co., 29 Hun 1, and where the taking necessitates the reconstruction of a tramway or interferes with machinery and structures for handling coal or stone, the cost of changing and reconstructing the apparatus so as to obviate the injury and conform to the new conditions, may be shown and considered in estimating damages. *Chicago, etc. Ry. Co.* v. *Wolf*, 137 Ill. 360, 27 N. E. 78; *Kersey* v. *Schuylkill River etc. R. R. Co.*, 133 Pa. St. 234, 19 Atl. 553; *Baird* v. *Schuylkill River E. S. R. R. Co.*, 154 Pa. St. 459, 25 Atl. 833. *In matter of N. Y. etc. R. R. Co.*, 29 Hun 646, it was held, in a case in which plaintiff was cut off from a channel of the river by a railroad, that the measure of damages was the cost of a causeway out to the railroad with an allowance for the extra distance to be traversed to get to the water. Where property is damaged by a change in grade it was held that the cost of adjusting the property to the new grade may be shown. *City of Topeka* v. *Martineau*, 42 Kan. 387, 22 Pac. 419; *Smith* v. *Kansas City*, 128 Mo. 23, 30 S. W. 314; *Manson* v. *Boston*, 163 Mass. 479, 40 N. E. 850, and so in general it may be said that the cost of adjusting the property to the changed conditions, brought about by the taking, or of alleviating or preventing the continuance of the damage, or of changing or reconstructing works so as to use the property as before, may properly be shown and considered in estimating how much the property has been damaged. *Fort Street Union Depot Co.* v. *Bachus*, 92 Mich. 33, 52 N. W. 790; *Phila. etc. R. R. Co.*, v. *Rogers*, 2 Walker's Pa. Sup. Ct. 275; *Hire* v. *Knisley*, 130 Ind. 295, 29 N. E. 1132; *Ehret* v. *Schuylkill River E. S. R. R. Co.*, 151 Pa. St. 158, 24 Atl. 1068; *Burnett* v. *Nicholson*, 86 N. C. 99; *Wilcox* v. *City of Meriden*, 57 Conn. 120, 17 Atl. 366; *Cooper* v. *Dallas*, 83 Tex. 239, 18 S. W. 565; *Patton* v. *Philadelphia*, 175 Pa. St. 88, 34 Atl. 344. But the damages are not necessarily measured by such cost. *Stewart* v. *Council Bluffs*, 84 Ia. 61, 50 N. W. 219; see also, *Koch* v. *Sackman-Phillips Inv. Co.*, 9 Wash. 405, 37 Pac. 703. However the general rule as laid down in the principal case for the ascertainment of damages, has been upheld generally. *Osgood* v. *Chicago*, 154 Ill. 194; *White* v. *Foxborough*, 151 Mass. 28, 23 N. E. 652; *Snyder* v. *Western Union R. R. Co.*, 25 Wis. 60. For other authorities see notes in 85 Am. St. Rep. 311, 19 Am. St. Rep. 459, also, 88 Am. Dec. 118. In *Robb* v. *Maysville etc. Co.*, 3 Metc. (Ky.) 117, the court in ascertaining the damages applied as a test, what would be its value to the injured party, situated as it is, if he were not the owner of it, but owned the adjacent property under the circumstances as they exist. This appears as an exception to the general rule, and is not followed to any considerable extent.

EVIDENCE—CONFESSION OF AN ALLEGED ACCOMPLICE.—In a prosecution for homicide, a confession made by an alleged accomplice, charging defendant with complicity in the crime, was admitted in evidence against the defendant, it being shown that before the information was filed against the accused but while he was in jail this confession was read to him in the presence of the author of it, and that the accused made no reply thereto. *Held*, that the confession might properly be read to the jury to support an inference of an assent by the accused to the statements of his complicity in the crime con-